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Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley (Redacted)

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July 2, 2019
OIG-19-51



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OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

July 02, 2019

MEMORANDUM FOR: The Honorable Kevin K. McAleenan
Acting Secretary
Department of Homeland Security

FROM: Jennifer L. Costello *Jennifer J. Costello*
Acting Inspector General

SUBJECT: *Management Alert – DHS Needs to Address
Dangerous Overcrowding and Prolonged Detention
of Children and Adults in the Rio Grande Valley*

For your action is our final management alert, *Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley*, the purpose of which is to notify you of urgent issues that require immediate attention and action. Specifically, we encourage the Department of Homeland Security (DHS) to take immediate steps to alleviate dangerous overcrowding and prolonged detention of children and adults in the Rio Grande Valley. Issuance of this management alert is consistent with our duties under the *Inspector General Act of 1978*, as amended, to conduct inspections and recommend policies to promote economy, efficiency, and effectiveness in DHS programs and operations.

We have incorporated the formal comments provided by your office on the draft management alert and appended them verbatim. We may continue our spot inspections of the southern border facilities, and may revisit Rio Grande Valley sector sites to monitor overcrowding and prolonged detention.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our alert to congressional committees with oversight and appropriation responsibility over DHS. We also will post the alert on our website for public dissemination.

Please call me with any questions, or your staff may contact Diana Shaw, Assistant Inspector General for Special Reviews and Evaluations, at (202) 981-6000.

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Background

In May 2019, we issued a management alert about dangerous overcrowding observed in the El Paso area during our unannounced inspections of U.S. Customs and Border Protection (CBP) holding facilities.¹ During the week of June 10, 2019, we traveled to the Rio Grande Valley in Texas and again observed serious overcrowding and prolonged detention in Border Patrol facilities requiring immediate attention.

According to Border Patrol statistics, the Rio Grande Valley sector has the highest volume on the southwest border, with nearly a quarter million apprehensions in the first eight months of FY 2019. This total represents a 124 percent increase compared to the same period in FY 2018, with the greatest increase in family units. Table 1 shows the total number of apprehensions by category and the percent increase for the Rio Grande Valley sector.

Table 1. Rio Grande Valley Sector Border Patrol Apprehensions

	Apprehensions October 2017 to May 2018	Apprehensions October 2018 to May 2019	Percent Increase
Unaccompanied Alien Children	14,822	23,944	62%
Family Units	36,773	135,812	269%
Single Adults	48,240	63,507	32%
Total	99,835	223,263	124%

Source: Border Patrol southwest border apprehensions by sector

During our visits to five Border Patrol facilities and two ports of entry in the Rio Grande Valley,² we reviewed compliance with CBP's Transport, Escort, Detention and Search (TEDS) standards, which govern CBP's interaction with detained individuals,³ and observed serious overcrowding and prolonged detention of unaccompanied alien children (UACs),⁴ families, and single adults that require immediate attention. Specifically,

¹ Management Alert – DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center (OIG-19-46), May 2019.

² We visited the McAllen, Weslaco, and Fort Brown Border Patrol Stations, and the Border Patrol Centralized Processing Center and Donna Processing Center. We also visited the Hidalgo and Progreso ports of entry.

³ U.S. Customs and Border Protection, National Standards on Transport, Escort, Detention, and Search, October 2015.

⁴ Unaccompanied alien children are aliens under the age of 18 with no lawful immigration status in the United States and without a parent or legal guardian in the United States “available” to provide care and physical custody for them. 6 U.S.C. § 279(g)(2).



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Border Patrol was holding about 8,000 detainees in custody at the time of our visit, with 3,400 held longer than the 72 hours generally permitted under the TEDS standards.⁵ Of those 3,400 detainees, Border Patrol held 1,500 for more than 10 days.

CBP is responsible solely for providing short-term detention for aliens arriving in the United States without valid travel documents. CBP detains such individuals on a short-term basis to allow for initial processing, and then transfers the individuals to other government agencies. However, even when CBP has completed its initial processing obligations, it cannot transfer detainees out of its facilities until U.S. Immigration and Customs Enforcement (ICE) has space for single adults and some families, and the U.S. Department of Health and Human Services (HHS) has space for UACs. Currently, because both ICE and HHS are operating at or above capacity, CBP has experienced increasing instances of prolonged detention in its facilities.

This management alert addresses overcrowding at four of the five Border Patrol facilities, and prolonged detention at all five facilities, we visited in the Rio Grande Valley. While our prior management alert on an El Paso facility identified similar issues with respect to the single adults detained in that facility, this alert highlights additional concerns with respect to UACs and families being detained in the Rio Grande Valley facilities we visited. This alert also addresses security incidents in these facilities that reflect an escalation of the security concerns raised in our prior alert.

At-Risk Populations are Subject to Overcrowding and Prolonged Detention in Border Patrol Facilities

During our visits to five Border Patrol facilities in the Rio Grande Valley, we observed serious overcrowding of UACs and families, populations defined as “at-risk” in TEDS standards (see figures 1 through 3).

⁵ TEDS 4.1 provides that “[d]etainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible.”



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Figure 1. Overcrowding of families observed by OIG on June 10, 2019, at Border Patrol's McAllen, TX, Station. Source: OIG



Figure 2. Overcrowding of families observed by OIG on June 11, 2019, at Border Patrol's McAllen, TX, Centralized Processing Center. Source: OIG



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Figure 3. Overcrowding of families observed by OIG on June 11, 2019, at Border Patrol's Weslaco, TX, Station. Source: OIG

In addition to the overcrowding we observed, Border Patrol's custody data indicates that 826 (31 percent) of the 2,669 children⁶ at these facilities had been held longer than the 72 hours generally permitted under the TEDS standards and the *Flores Agreement*.⁷ For example, of the 1,031 UACs held at the Centralized Processing Center in McAllen, TX, 806 had already been processed and were awaiting transfer to HHS custody. Of the 806 that were already processed, 165 had been in custody longer than a week.

⁶ This population consisted of 1,130 UACs, and 1,539 children who crossed as part of a family unit.

⁷ The *Flores Agreement* generally permits detention of minors no longer than 72 hours, with a provision that in an influx of minors, placement should be as expeditious as possible. In addition, the *Trafficking Victims Protection Reauthorization Act of 2008* requires DHS to meet this timeline unless there are “exceptional circumstances.” 8 U.S.C. § 1232(b)(3). The *Flores Agreement* also includes a requirement that immigration officials hold minors immediately following arrest in facilities that provide: (1) access to food and drinking water; (2) medical assistance in the event of emergencies; (3) toilets and sinks; (4) adequate temperature control and ventilation; (5) adequate supervision to protect minors from others; (6) separation from unrelated adults whenever possible; and (7) contact with family members who were arrested with the minor.



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Additionally, there were more than 50 UACs younger than 7 years old, and some of them had been in custody over two weeks while awaiting transfer.

In addition to holding roughly 30 percent of minor detainees for longer than 72 hours, several Rio Grande Valley facilities struggled to meet other TEDS standards for UACs and families. For example, children at three of the five Border Patrol facilities we visited had no access to showers, despite the TEDS standards requiring that “reasonable efforts” be made to provide showers to children approaching 48 hours in detention.⁸ At these facilities, children had limited access to a change of clothes; Border Patrol had few spare clothes and no laundry facilities. While all facilities had infant formula, diapers, baby wipes, and juice and snacks for children, we observed that two facilities had not provided children access to hot meals — as is required by the TEDS standards⁹ — until the week we arrived.¹⁰ Instead, the children were fed sandwiches and snacks for their meals. Additionally, while Border Patrol tried to provide the least restrictive setting available for children (e.g., by leaving holding room doors open), the limited space for medical isolation resulted in some UACs and families being held in closed cells.

Overcrowding and Prolonged Detention of Single Adults Have Resulted in Security Incidents and Non-Compliance with TEDS Standards

In the Border Patrol facilities we visited, we also observed serious overcrowding and prolonged detention among adult detainees. TEDS provides that “under no circumstances should the maximum [cell] occupancy rate, as set by the fire marshal, be exceeded.”¹¹ However, at one facility, some single adults were held in standing room only conditions for a week and at another, some single adults were held more than a month in overcrowded cells (see figures 4 and 5).

⁸ TEDS 5.6

⁹ TEDS 5.6

¹⁰ Border Patrol management at these facilities told us there were too many detainees on site to microwave hot meals, and it had taken time to secure a food contract.

¹¹ TEDS 4.7



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Figure 4. Standing room only for adult males observed by OIG on June 10, 2019, at Border Patrol's McAllen, TX, Station. *Source: OIG*



Figure 5. Fifty-one adult females held in a cell designated for male juveniles with a capacity for 40 (left), and 71 adult males held in a cell designated for adult females with a capacity for 41 (right), observed by OIG on June 12, 2019, at Border Patrol's Fort Brown Station. *Source: OIG*

We are concerned that overcrowding and prolonged detention represent an immediate risk to the health and safety of DHS agents and officers, and to those detained. At the time of our visits, Border Patrol management told us there had already been security incidents among adult males at multiple facilities. These included detainees clogging toilets with Mylar blankets and socks in order to be released from their cells during maintenance. At one facility, detainees who had been moved from their cell



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during cleaning refused to return to their cell. Border Patrol brought in its special operations team to demonstrate it was prepared to use force if necessary. Additionally, detainees have attempted to escape while removed from their cells during maintenance.

Senior managers at several facilities raised security concerns for their agents and the detainees. For example, one called the situation “a ticking time bomb.” Moreover, we ended our site visit at one Border Patrol facility early because our presence was agitating an already difficult situation. Specifically, when detainees observed us, they banged on the cell windows, shouted, pressed notes to the window with their time in custody, and gestured to evidence of their time in custody (e.g., beards) (see figure 6).



Figure 6. Eighty-eight adult males held in a cell with a maximum capacity of 41, some signaling prolonged detention to OIG Staff, observed by OIG on June 12, 2019, at Border Patrol's Fort Brown Station. *Source: OIG*

In these overcrowded conditions, CBP was unable to meet TEDS standards. For example, although TEDS standards require CBP to make a reasonable effort to provide a shower for adults after 72 hours,¹² most single adults had not had a shower in CBP custody despite several being held for as long as a month. At some facilities, Border Patrol was giving

¹² TEDS 4.11



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detainees wet-wipes to maintain personal hygiene. Most single adult detainees were wearing the clothes they arrived in days, weeks, and even up to a month prior. Further, although TEDS standards require agents to remain cognizant of detainees' religious and other dietary restrictions,¹³ many single adults had been receiving only bologna sandwiches. Some detainees on this diet were becoming constipated and required medical attention.¹⁴

Border Patrol Requires Immediate Assistance Placing Detainees, but ICE Capacity is Limited

Within DHS, providing long-term detention is the responsibility of ICE, not CBP.¹⁵ During the week of our visits, ICE had approximately 54,000 beds occupied nationwide, but was only funded for 42,000 beds. In our discussions with ICE field management about this situation, they explained that their capacity to find additional bed space is strained. According to ICE field management, ICE has already increased capacity at its Port Isabel facility from 800 beds to an “emergency level” of 1,200, and then further increased capacity to 1,550 by adding plastic beds in some cells. However, the facility remains unable to accommodate most Border Patrol detainees. From Port Isabel and other detention facilities in the Rio Grande Valley, ICE can fly detainees to other ICE facilities, but officials said only limited beds are available nationwide. As a result, Border Patrol continues to hold detainees for more than 72 hours in overcrowded conditions while they await transfer.

DHS Management’s Response and OIG Analysis

DHS management provided written comments on a draft of this alert. We included a copy of DHS’ management comments in their entirety in appendix A. We also incorporated DHS’ technical comments in the final alert, as appropriate.

DHS Response:

DHS described the situation on the southern border as “an acute and worsening crisis,” and cited measures DHS has taken to expand CBP’s capacity on the southern border. Specifically, DHS said it has added two tents capable of holding 500 people each in the Rio Grande Valley, and

¹³ TEDS 4.13

¹⁴ Two of the facilities obtained a contract for hot meals the week of our site visit, but others continued to serve sandwiches.

¹⁵ See 6 U.S.C. § 211(c)(8)(B).



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plans to add another to house single adults by July 29, 2019. DHS also cited examples of CBP's emergency medical response across the southern border. DHS said the number of UACs in Border Patrol custody had been reduced from nearly 2,800 on June 7, 2019, to less than 1,000 on June 25, 2019.

OIG Response:

We recognize the extraordinary challenges CBP faces, and welcome the information that DHS has been able to reduce the number of UACs in custody. However, we remain concerned that DHS is not taking sufficient measures to address prolonged detention in CBP custody among single adults. Although an additional 500 beds in the Rio Grande Valley may reduce overcrowding among single adults, DHS must transfer single adults to ICE custody as quickly as possible; within DHS, long-term detention is ICE's responsibility.



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Appendix A

DHS's Management Comments to the Draft Management Alert

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

July 1, 2019

MEMORANDUM FOR: Jennifer L. Costello
Acting Inspector General

FROM: *for* Jim H. Crumpacker, CIA, CFE *signature*
Director
Departmental GAO-OIG Liaison Office

SUBJECT: Management Response to OIG Draft Management Alert: "DHS
Needs to Address Dangerous Overcrowding and Prolonged
Detention of Children and Adults in the Rio Grande Valley"
(Project Number 19-039-SRE-CBP)

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

DHS performs an essential role in securing our Nation's borders at and between ports of entry, and enforces U.S. immigration law within the interior of the country. U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) officers and agents continually uphold the utmost professionalism while performing essential border security operations. DHS is devoted to the care and processing of the individuals in our custody with the utmost dignity and respect.

The current situation on the Southern Border represents an acute and worsening crisis. Our immigration system is not equipped to accommodate a migration pattern like the one we are experiencing now. In May 2019, an average of over 4,600 people a day crossed our Southern Border illegally or arrived at ports of entry without proper documents. For comparison, in May 2017, that number was less than 700 a day. CBP total enforcement actions during May 2019 were 623 percent higher than in May 2017, and 206 percent higher than the May average over the past seven years (2012-2019).

The current migration flow and the resulting humanitarian crisis are rapidly overwhelming the ability of the Federal Government to respond. In March 2019, CBP encountered over 103,000 illegal border crossers and inadmissible aliens. In April 2019, that number exceeded 109,000—the highest monthly levels in more than a decade. CBP



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facilities are at peak capacity, primarily due to record numbers of Unaccompanied Alien Children (UAC) awaiting placements with the U.S. Department of Health and Human Services (HHS). As of June 7, 2019, nearly 2,800 UACs were waiting in Border Patrol stations that were not built nor equipped to house them. By June 25, 2019, however, that number had reduced to under 1,000.

During this extraordinary influx, DHS has taken steps to ensure an elevated standard of care in response to the current humanitarian crisis and has directed additional personnel and resources to the border. Examples include:

- CBP's Rio Grande Valley Sector added a soft-sided structure capable of holding up to 500 people on May 3, 2019, and a second soft-sided structure, capable of holding an additional 500 people on June 19, 2019. A third soft-sided structure to house single adults is projected to be operational by July 29, 2019.
- CBP has obligated over \$49 million for medical services for those in custody.
- CBP has and continues to take steps to address the health and safety of those in custody. For example, Border Patrol agents are taking an average of 77 people to the hospital every day – over 18,000 people since October 1, 2018. Further, agents spent 211,010 work hours during this same period with people in custody and in the hospital rather than patrolling the border.
- CBP is expanding existing medical service contracts in the busiest areas on the Southwest Border to provide medical assessments and basic level medical services to all minors and to any adult that is in need while in CBP custody.
- Border Patrol agents have saved thousands of lives – people overcome by the elements – including people found suffering from dehydration, heat stroke, hypothermia, drowning, injuries, and left for dead by smugglers in some of the most remote areas of our border as they enter the country illegally. For instance, agents have rescued over 3,400 people so far since October 1, 2018 and hazardous water rescues are up nearly 400 percent over the previous fiscal year.

Throughout this crisis, CBP continues to do everything it can to promptly transfer, transport, process, release, or repatriate those in our custody. However, without Congressional action to address legal and judicial loopholes, families and UACs will continue to be incentivized by the smuggling organizations to make the dangerous journey and be encouraged by the likelihood that families will not be detained during their immigration proceedings. As more migrants become emboldened by these loopholes, CBP expects this influx to not only continue, but also to escalate.

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Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.



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Appendix B
Management Alert Distribution

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